STATE OF MICHIGAN

COURT OF APPEALS

VINCENT DILORENZO and ANGELA TINERVIA,

Plaintiffs-Appellants,

v

STEVEN M. KIRKPATRICK, GARY VETTER, J. GRANT SMITH, BRUCE CARLETON, PLANTE & MORAN, PLLC,

Defendants-Appellees.

UNPUBLISHED
February 14, 2006

No. 261748
Macomb Circuit Court
LC No. 2004-005294-CZ

Before: Donofrio, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition and dismissing the complaint in this action for breach of contract amongst other claims. Because a release in a prior related case bars the instant case, and because plaintiffs' claims against defendant Plant & Moran are also barred by the applicable statute of limitations, summary disposition was appropriate, and we affirm.

Plaintiffs admit to being principal shareholders of New Century Bancorp, Inc., the holding company for New Century Bank. Plaintiffs allege that they invested in New Century Bancorp, Inc. stock based on defendants' representations, documents, and financial statements. At various times defendants were either stockholders, officers, or directors of New Century Bancorp, Inc., and defendant Plante & Moran provided accounting and auditing services to New Century Bancorp, Inc. In March 2002, the State of Michigan placed New Century Bank in receivership. Plaintiffs allege that they learned certain bank assets were worth significantly less than the book value defendants' assigned to the assets. In order to bring the bank into compliance with the State of Michigan's demands, plaintiff Dilorenzo took over operation of the bank and together with plaintiff Tinervia, according to their complaint, cooperated with the State and made the "necessary adjustments and cash infusions to improve the condition of the Bank and comply with the Bank's charter and deposit insurance requirements."

Plaintiffs filed the instant lawsuit in December 2004 in Macomb Circuit Court alleging breach of contract, misrepresentation, fraudulent inducement, conspiracy, and accounting and/or auditing malpractice, and demanded judgment in the amount of $7.5 million, plus interest, costs, and attorney fees. Two related cases, one in Oakland Circuit Court, and one in federal court had

been previously brought and were settled by the parties to those cases resulting in written releases signed by both New Century Bank and plaintiff Dilorenzo. The respective courts also issued orders of dismissal in both cases closing the causes of action. Finding that the prior releases barred the instant case, and finding that the lawsuit filed against defendant Plant & Moran was barred by the applicable statute of limitations, the Macomb Circuit court granted summary disposition in favor of all defendants and dismissed the instant case. It is from this order that plaintiffs appeal.

Plaintiffs now argue on appeal that the trial court inappropriately granted summary disposition in favor of defendants when it errantly relied on the settlement documents issued in the two prior cases involving the same subject matter. Defendants argue that the trial court properly granted summary disposition in their favor because plaintiff's claims are barred by the doctrine of release. Specifically, defendants aver that the releases from the previous claims encompass all claims brought in this action and therefore summary disposition was proper.

We review de novo a trial court's decision to grant or deny a motion for summary disposition under MCR 2.116(C)(7) to determine whether the moving party was entitled to judgment as a matter of law. *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000). In reviewing a motion under MCR 2.116(C)(7), this Court accepts as true the plaintiff's well-pleaded allegations and construes them in the plaintiff's favor. *Id*. This Court must consider the pleadings, affidavits, depositions, admissions, and documentary evidence filed or submitted by the parties to determine whether a genuine issue of material fact exists. *Id*.; MCR 2.116(G)(5).

The trial court did not state specifically in its oral holding or written order which prior release precluded litigation of the instant case. However, our review of the record reveals that we need only address the "Settlement and Release Agreement" from the previous case brought in the Oakland Circuit Court. The release provided, in pertinent part, that:

> The Parties, each one of them, individually and on behalf of their respective agents, heirs and assigns, hereby fully release and forever discharge all other Parties to this Agreement, each one of them, along with their agents, insurers, attorneys, heirs and assigns, from *any and all* claims, actions, causes of action, rights, liabilities, obligations and demands of every kind and nature, known or unknown, suspected or unsuspected, contingent or liquidated, at law or in equity, arising or accruing at any time prior to and through the date of this agreement, including but not limited to claims for past, present and future damages and costs of any kind, including punitive, or other legal, statutory, or equitable relief, and for the payment or reimbursement of any attorney fees, defense and other litigation costs advanced, and other costs and expenses related to the Suit, to the extent said liability is related to or arises from the matters complained of in the Suit, specifically including all claims, counterclaims and third party claims asserted therein. [Emphasis added.]

Plaintiffs argue that the phrase "in the Suit" limits the terms of the release to those claims asserted in the previous Oakland Circuit action. However, by its terms, the release applies to not only the Oakland Circuit action but "fully releases and forever discharges" parties to it "from *any and all* claims, actions, causes of action, rights, liabilities, obligations and demands of every kind and nature . . ." Contrary to plaintiffs' characterization, the plain language of the release clearly

encompasses any claim that the parties to the Oakland Circuit action and their "respective agents, heirs and assigns" then had or may have in the future arising from the circumstances surrounding their relationships with New Century Bancorp, Inc.

Similar to the facts in *Romska v Opper*, 234 Mich App 512; 594 NW2d 853 (1999), the instant cause of action unquestionably fits within the class of "*any and all* claims, actions, causes of action, rights, liabilities, obligations and demands of every kind and nature, known or unknown, suspected or unsuspected, contingent or liquidates, at law or in equity, arising or accruing at any time prior to and through the date of this agreement, including but not limited to claims for past, present and future damages and costs of any kind." "There cannot be any broader classification than the word all, and all leaves room for no exceptions." *Id*. at 515-516 (internal quotations omitted). For these reasons, we can fathom no reason to look beyond the plain, explicit, and unambiguous language of the release in order to conclude that no further liability exists arising out of the factual circumstances surrounding plaintiffs' investments in, and relationship with, New Century Bancorp, Inc..

Our holding applies to each plaintiff. Plaintiff Dilorenzo was a party to the Oakland Circuit lawsuit and both plaintiffs admit to being principal shareholders of New Century Bancorp, Inc. As shareholders, both plaintiff Dilorenzo and plaintiff Tinervia were agents of New Century Bancorp, Inc. Because the release applies to each party to the previous lawsuit, as well as each party's "respective agents, heirs and assigns," as shareholders, the release squarely and unequivocally encompasses each plaintiff's asserted claims. Accordingly, we conclude that the release at issue applies to both plaintiffs and operates to discharge any and all claims plaintiffs brought in the instant cause of action.

Due to the broad language of the release, it operates to bar the claims plaintiffs brought against defendant Plante & Moran. See *Romska, supra* at 515-516. For that reason, we need not reach plaintiffs' argument that the trial court erred when it granted defendant Plante & Moran's motion for summary disposition based on the relevant statute of limitations. However, because the trial court ruled on it, we briefly state that our review of the record reveals that even when giving the benefit of the doubt to plaintiffs regarding the latest date possible to file their accounting malpractice claim, plaintiffs still missed the statute of limitations by nearly two years when they filed their complaint in December 2004. See *Local 1064, RWDSU AFL-CIO v Ernst & Young*, 449 Mich 322, 329-333; 535 NW2d 187 (1995).

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Kirsten Frank Kelly